



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-55/52029

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the St. Croix County Dept. of Human Services in regard to medical assistance, a hearing was held on February 19, 2002, at New Richmond, Wisconsin. The record was left open for 30 days at the petitioner's request.

The issue for determination is whether the petitioner may allocate income to his spouse under the spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

Stephen A. Kosa
113 East Elm Street
River Falls, WI 54022

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Diane Peterson, ESS
St. Croix County Dept Of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) resides in a nursing home in St. Croix County.
2. The petitioner has received institutional medical assistance since at least 1999.

3. The county agency believed that the petitioner and his spouse did not report all their assets to it when he originally applied for medical assistance.
4. The petitioner submitted a new application for medical assistance on October 30, 2001.
5. The petitioner's spouse refused to sign the petitioner's latest medical assistance application.
6. The petitioner's spouse has refused to submit various documents requested by the county agency to verify her assets.
7. The county agency denied the petitioner's request to assign income to his spouse because she failed to sign the application or verify their assets.

DISCUSSION

The petitioner lives in an institution and has received medical assistance since at least 1999. At some point the county agency determined that it was likely that the petitioner or his spouse failed to report all of their assets when he first applied for medical assistance. The petitioner filled out a new application for medical assistance on October 30, 2001. His wife refused to sign the application or supply specific pieces of documentation that the county agency requested concerning her and the petitioner's assets. The county agency processed the petitioner's application as if he were unmarried, which the *MA Handbook*, Appendix, § 23.8.0 requires it to do. Although not stated by the county, the \$2,000 asset limit for single medical assistance applicants likely would have left him ineligible for the program. *See* §49.47(4)(b)3g, Stats. Nevertheless, the county agency found him eligible for medical assistance under the program's hardship provision. *MA Handbook*, Appendix, §23.4.4.

Late in 2001 the petitioner sought to assign his income to his spouse under the spousal impoverishment provisions of the medical assistance program. Those provisions allow an institutionalized person to assign income and assets to his spouse so that she does not fall into poverty. *See* §49.455, Stats. The minimum monthly maintenance needs allowance currently is the lesser of \$2,175 or \$1,990 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0; *BPS Operations Memo*, 02-23; issued March 19, 2002. Excess shelter costs are shelter costs above \$597. *Id.* The county agency denied the petitioner's request because his wife did not sign the most recent application or submit the requested verification of assets.

The petitioner's attorney at the hearing and the spouse's attorney in a letter contend that the amount of assets are irrelevant because the petitioner seeks to assign only his income to his spouse. This argument ignores that the spousal impoverishment provisions do not allow couples to keep unlimited assets. A spouse is allowed sufficient assets to generate "enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance..." §49.455(8)(d), Stats. Unless the limit is raised at a fair hearing, couples whose assets are between \$50,000 and \$100,000 may assign \$50,000 to the community spouse, those whose assets are greater than \$100,000 but less than \$174,000 may assign one-half of the total, and those with more than \$174,000 may assign \$87,000. §49.455(6)(b)3, Stats. *MA Handbook*, Appendix §23.4.2. In addition, the institutionalized person can keep up to \$2,000 in assets in his own name without affecting his eligibility. Thus, unless the petitioner and his spouse can show that their assets do not exceed \$52,000, or that they require additional assets to produce income to bring her up to the minimum monthly needs allowance, they will not immediately be eligible for protection under these provisions. The only way that they can show that either of these conditions apply is to verify their assets as the county agency requested.

Medical assistance rules require that assistance be denied when a person with the ability to do so fails to verify assets. §HFS 102.03(1), Wis. Adm. Code. At the February 19, 2002 hearing I left the record open for 30 days so that the petitioner's spouse could submit additional information. After this period expired I waited to write this decision so that the spouse could have more time to submit the required information.

Her attorney contends in a letter dated April 5, 2002 that the time set for providing the information was too limited to reply. This is nonsense. The county agency has tried to obtain this information for over five months. *See, e.g. Exhibit 4.* During this entire time the spouse has had an attorney available to help her. Yet she has never cooperated in any way and did not even appear at the hearing. Because it is almost always in one's best interest to seek the protection available under the spousal impoverishment provisions, the only logical explanation for her failure to do so is that she is hiding assets. The evidence establishes that she is able to verify her assets. Until she cooperates with the county agency and submits the requested verification her husband cannot assign income to her.

CONCLUSIONS OF LAW

The county agency correctly found that the petitioner may not allocate income to his spouse because she has failed to verify their assets.

NOW, THEREFORE, it is **ORDERED**

That the petition herein be and the same hereby is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this 30th day of
April, 2002

/sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
71/MDO